



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-HQ-OAR-2019-0611; FRL-7505-03-OAR]

RIN 2060-AU54

### Implementation of the Revoked 1997 8-Hour Ozone National Ambient Air Quality Standards; Areas that Attained by the Attainment Date

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is codifying its findings that nine areas in four states attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (herein referred to as the revoked 1997 ozone NAAQS) by the applicable attainment dates. This rule finalizes EPA's proposed determination that the following areas timely attained the standards: the Buffalo-Niagara Falls area, and the Jefferson County, Poughkeepsie and Jamestown areas in the State of New York; the Shoreline Sheboygan County and Inland Sheboygan County areas in Wisconsin; the Denver-Boulder-Greeley-Ft. Collins-Loveland area in Colorado and the San Francisco Bay and Ventura County areas in California.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION].

**ADDRESSES:** The EPA established Docket ID No. EPA-HQ-OAR-2019-0611 for this action. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Out of an abundance of caution

for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. The hours of operation at the EPA Docket Center Reading Room are 8:30 a.m. - 4:30 p.m., Monday-Friday. The telephone number for the EPA Docket Center is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this final rule, contact Ms. Virginia Raps, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C539-01, Research Triangle Park, NC 27711, telephone (919) 541-4383; fax number: (919) 541-5315; email address: [raps.virginia@epa.gov](mailto:raps.virginia@epa.gov).

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### **I. Background**

In February 2019, the EPA sent letters to the state air agencies of New York, Wisconsin, Colorado and California affirming that a total of nine areas within these states attained the revoked 1997 ozone NAAQS by the applicable attainment dates. On October 9, 2020,<sup>1</sup> the EPA concurrently published a proposal and a direct final rule to codify the findings effective on January 7, 2021. Because an adverse comment was received prior to the end of the comment period, a notice to withdraw the direct final rule was published in the *Federal Register* and became effective on December 9, 2020. Consequently, the EPA is now acting on the proposal by publishing this final rule. Entities potentially affected directly by this final action include the public seeking information on the air quality status of the areas codified by this final rule, and state air agencies with jurisdiction over areas found to have attained by the attainment date. Further, these areas are, therefore, not subject to anti-backsliding consequences for failure to timely attain the standards.

## **II. Response to Comments**

The EPA received an anonymous comment on the proposal suggesting that the attainment year 2007-2009 design value (DV) for Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, (herein referred to as the Denver area) was incorrect. Instead of 0.078 parts per million (ppm), as given in Table 1 of the direct final rule and in the supporting letter to the Colorado Department of Public Health and Environment (CDPHE) from Region 8 dated February 8, 2019, the commenter suggested the DV for that time period was actually 0.082 ppm, citing the data provided on the EPA website at <https://www.epa.gov/air-trends/air-quality-design-values>. The EPA investigated the information in the comment letter and found that the EPA incorrectly assigned the Denver area an attainment year DV of 0.078 ppm where, according to monitoring data for 2007-2009, the correct DV for the Denver area was 0.082 ppm. As a result of its investigation, the EPA Region 8 office issued a letter dated November 13, 2020, correcting the

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<sup>1</sup> See “Updates to 40 CFR part 52 for Areas that Attained by the Attainment Date,” proposal [85 FR 64089, October 9, 2020] and direct final rule [85 FR 64046, October 9, 2020].

2007-2009 DV for the Denver area and notifying Mr. Garry Kaufman, Director, CDPHE, of the correction to the DV with the assurance that the correction will be formalized through a final rule published in the *Federal Register*. The correction changing the 2007-2009 DV for the Denver area from 0.078 ppm to 0.082 ppm is made in Table 1 in this final rule. The EPA notes that the revoked 1997 ozone NAAQS, effective on September 16, 1997 [62 FR 38855, July 18, 1997], was established at 0.08 ppm, which means that an area's attaining DV may in effect be as high as 0.084 ppm using the standard rounding convention to three decimal places.<sup>2</sup> Therefore, the correct 2007-2009 DV of 0.082 ppm shows that the Denver area timely attained the revoked 1997 ozone NAAQS.

The proposal received three other comments. One was complimentary to the EPA's proposal suggesting it was a good idea to show the states' success in attaining the revoked 1997 ozone NAAQS. The remaining two comments were beyond the scope of this action.

### **III. Final Action**

On October 9, 2020, the EPA issued a proposal to codify in 40 CFR part 52 its findings that nine areas factually attained the revoked 1997 ozone NAAQS by the applicable attainment dates. This rule provides the EPA's response to comments on the proposal and finalizes the action as proposed.

The areas that attained the revoked 1997 8-hour ozone NAAQS by the attainment date and the associated DV information are summarized in Table 1.<sup>3</sup>

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<sup>2</sup> See "National Ambient Air Quality Standards for Ozone" [73 FR 16435, 16437, Mar. 27, 2008], section I.C. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2008-03-27/pdf/E8-5645.pdf>.

<sup>3</sup> The Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, area is identified as Denver Metro/North Front Range, CO, (DMNFR) in 40 CFR part 81 for the 2015 8-hour ozone NAAQS [77 FR 28424, 28426, May 14, 2012]. See also, "Air Quality Designations and Classifications for the [1997] 8-Hour Ozone NAAQS; Early Action Compact Areas With Deferred Effective Dates" [69 FR 23858, Apr. 30, 2004]. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2004-04-30/pdf/04-9152.pdf>.

**Table 1—Areas that Attained the Revoked 1997 8-hour Ozone NAAQS by the Attainment Date**

EPA Region	State	Area Name	Applicable Attainment Date	Attainment Year Design Value (DV)	
				Level	DV Years
2	New York	Buffalo-Niagara Falls, NY	June 15, 2010	0.076	2007-2009
		Jamestown, NY	June 15, 2010	0.079	2007-2009
		Jefferson County, NY	June 15, 2010	0.074	2007-2009
		Poughkeepsie, NY	June 15, 2010	0.078	2007-2009
5	Wisconsin <sup>A</sup>	Shoreline Sheboygan County, WI	June 15, 2010	0.079	2007-2009
		Inland Sheboygan County, WI			
8	Colorado	Denver-Boulder-Greeley-Ft. Collins-Loveland, CO	November 20, 2010	0.082	2007-2009
9	California	San Francisco Bay Area, CA	June 15, 2007	0.080	2004-2006
		Ventura County, CA	June 15, 2013	0.081	2010-2012

<sup>A</sup> On April 30, 2004 [69 FR 23858] and May 21, 2012 [77 FR 30088], EPA designated the entirety of Sheboygan County, WI, as nonattainment for the 1997 ozone NAAQS and 2008 ozone NAAQS, respectively. The EPA’s February 8, 2019, letter to the Wisconsin Department of Natural Resources, finding that the area attained the revoked 1997 ozone NAAQS by the attainment date, applied the finding to the original full-county Sheboygan County, WI, area. On July 15, 2019, the EPA revised the original designation by splitting the Sheboygan County, WI, area for the revoked 1997 ozone NAAQS and the 2008 ozone NAAQS area into the separate Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI, areas [84 FR 33699, Jul. 15, 2019]. This change is reflected in 40 CFR 81.350 under “Wisconsin.” On April 26, 2020 [85 FR 23274] and May 12, 2020 [85 FR 28550], EPA proposed to redesignate the Inland Sheboygan, WI, area and Shoreline Sheboygan, WI, areas, respectively, to attainment of the 2008 ozone NAAQS. In those proposed rulemakings, EPA correctly indicated that redesignation for the more stringent 2008 ozone NAAQS would satisfy the obligation to adopt anti-backsliding requirements under the 1997 ozone NAAQS as codified at 40 CFR 51.1105(a)(1) and 40 CFR 51.1100(o). In the preamble to EPA’s July 10, 2020, final redesignation of the Inland Sheboygan, WI, area [85 FR 41400], EPA incorrectly stated that the revoked 1997 ozone NAAQS was not at issue in the redesignation, and upon EPA’s concurrent final redesignation of the Shoreline Sheboygan, WI, area [85 FR 41405], EPA failed to comment on any applicability to the revoked 1997 ozone NAAQS. In fact, as specified in EPA’s March 6, 2015 “SIP Requirements Rule” for the 2008 ozone NAAQS [80 FR 12264], approval of a request for redesignation to attainment for the 2008 ozone NAAQS signifies that the state has satisfied its obligations to adopt anti-backsliding requirements for the revoked 1997 ozone NAAQS. *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138, 1151-52 (D.C. Cir. 2018).

#### IV. Environmental Justice Considerations

This final rule requires no environmental justice considerations.

#### V. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:*

*Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and, therefore, was not submitted to the Office of Management and Budget for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538.<sup>4</sup> The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

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<sup>4</sup> U.S.C. is United States Code.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 [59 FR 7629, Feb. 16, 1994]. The documentation for this decision is contained in Section IV of this document titled, “Environmental Justice Considerations.”

*K. Congressional Review Act (CRA)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after

it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of final actions that are locally and regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit by **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, the statute also provides that notwithstanding that general rule, “a petition for review of any action . . . may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” Because this final action makes findings regarding the attainment status of areas across the country, in multiple EPA regions and within the jurisdictions over multiple U.S. Circuit Courts of Appeal, the Administrator finds that this action has nationwide scope and effect. Therefore, in accordance with CAA section 307(b)(1), petitions for review of this final action may be filed only in the United States Court of Appeals for the District of Columbia Circuit. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings for enforcement.

#### **List of Subjects In 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements and Volatile organic compounds.

Michael S. Regan,  
*Administrator.*



For the reasons stated in the preamble, part 52, title 40, chapter 1 of the Code of Federal Regulations are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F—California**

2. Section 52.282 is amended by adding paragraph (l) to read as follows:

**§ 52.282 Control strategy and regulations: Ozone.**

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(l) *Determination of attainment by the attainment date.* Effective **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. On February 21, 2019, the EPA determined that San Francisco Bay Area, CA, attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of June 15, 2007. The determination was based upon complete quality-assured and certified data for the 3 calendar years 2004-2006. Further, the EPA determined that the Ventura County, CA, area attained the standards for the revoked 1997 8-hour NAAQS by the applicable attainment date of June 15, 2013. The determination was based upon complete quality-assured and certified data for the 3 calendar years 2010-2012.

**Subpart G—Colorado**

3. Section 52.350 is amended by adding paragraph (d) to read as follows:

**§ 52.350 Control strategy: Ozone.**

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(d) *Determination of attainment by the attainment date for the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS).* Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. On November 13, 2020, the EPA determined that Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, attained the

revoked 1997 8-hour ozone NAAQS by the applicable attainment date of November 20, 2010.

The determination was based upon complete quality-assured and certified data for the three calendar years 2007-2009.

#### **Subpart HH—New York**

4. Section 52.1683 is amended by adding paragraph (s) to read as follows:

##### **§ 52.1683 Control strategy: Ozone.**

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(s) Determination of attainment by the attainment date. Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. On February 4, 2019, the EPA determined that certain areas in New York attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of June 15, 2010. The determination was based upon complete quality-assured and certified data for the 3 calendar years 2007-2009 for the following areas:

- (1) Buffalo-Niagara Falls, NY (consisting of Erie and Niagara Counties).
- (2) Jamestown, NY (consisting of Chautauqua County).
- (3) Jefferson County, NY (consisting of Jefferson County).
- (4) Poughkeepsie, NY (consisting of Dutchess, Orange and Putnam Counties).

#### **Subpart YY—Wisconsin**

5. Section 52.2585 is amended by adding paragraph (oo) to read as follows:

##### **§ 52.2585 Control strategy: Ozone.**

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(oo) Determination of attainment by the attainment date. Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Effective **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. On February 8, 2019, the EPA determined the Sheboygan County, WI, area attained the revoked 1997 8-hour ozone NAAQS by the attainment date of June 15, 2010. On July 15, 2019, the EPA

revised the designation for the Sheboygan County, WI, area for the revoked 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS, by splitting the original full-county area into the separate Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI, areas. On July 10, 2020, EPA redesignated both the Inland Sheboygan County, WI, nonattainment area [85 FR 41400] and the Shoreline Sheboygan County, WI, nonattainment area [85 FR 41405] to attainment for the 2008 8-hour ozone NAAQS. Therefore, under 40 CFR 51.1105(b)(1), the areas are no longer subject to the anti-backsliding obligations for the revoked 1997 ozone NAAQS under 40 CFR 51.1105(a)(1).

[FR Doc. 2021-15106 Filed: 7/28/2021 8:45 am; Publication Date: 7/29/2021]